SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-371

IRENE MAXCY WELLS,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, THIRD DISTRICT, STATE OF FLORIDA

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

NO._____

IRENE MAXCY WELLS,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, THIRD DISTRICT, STATE OF FLORIDA

Petitioner seeks to have reviewed a decision of the District Court of Appeal of Florida, Third District, dated December 5th, 1972 (App. p. 2) and its Order Denying Petitioner's Petition for Rehearing dated January 9th, 1973, which were filed in the records of said Court on said dates.

OPINION BELOW

The Opinion of the District Court of Appeal of Florida, Third District, is reported in 270 So.2d 399 and is reprinted herein as Appendix A.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 and § 2101 (d).

STATUTORY PROVISION INVOLVED

Florida Statute, § 837.02:

> Whoever being lawfully required to depose the truth in a proceeding in a court of justice, commits perjury, shall be punished if the perjury is committed on the trial of an indictment for a capital crime, by imprisonment in the state prison for life or any term of years; and if committed in any other case, by imprisonment in the state prison not exceeding twenty years.

QUESTION PRESENTED

1. Whether the District Court of Appeal of Florida, Third District, violated Petitioner's rights to "due process of law" and "equal protection of the laws" as guaranteed to her under the Fifth and Fourteenth Amendments to the United States Constitution when it refused to follow the decisions of the Supreme Court of the State of Florida and other District Courts of Appeals of the State of Florida as it was required to do under the well-established law of the State of Florida.

STATEMENT OF THE CASE

On April 30, 1971, a four count Information was filed against the Petitioner, charging her with perjury (App. p. A-24). At the conclusion of the State's case, the trial Judge granted a Motion for Judgment of Acquittal as to counts one, three and four and the Petitioner was subsequently found guilty of count two of the Information by a jury.

The pertinent portions of Count Two of the Information are as follows:

> ". . . after being duly sworn to speak the truth, did wilfully, knowingly, falsely, feloniously and corruptly swear in substance and effect as follows: 'Well I took $5,000.00 — gave Harry Lee $20,000.00 and went to the bank and put $5,000.00 in there, and I got a thousand dollars out to give to Mr. Sweet that I owed and *Mr. Trulock told me not to say anything about that at the other trial'*, such matter being material in said cause and *the said IRENE MAXCY WELLS, then and there well knowing that the said Mr. Trulock had not told her not to say anything at the other or another trial, about her having got out or kept out or taken out of the moneys in her hands and possession as aforesaid, the sum of $1,000.00, or any other sum to give to the said Mr. Sweet.*" (Emphasis Supplied)

The gist of count two of the Information is that when the Petitioner stated at the second trial of the case of the *State of Florida vs. John Sweet* that one *Roma Trulock told Petitioner not to say anything about the $1,000.00 that she had taken from the $5,000.00 to give to John Sweet* and that said statement was untrue. This being so, the only issue before the jury under count two of the information was *whether or not the Petitioner committed perjury when she testified as follows:*

> "Mr. Trulock told me not to say anything about that at the other trial".

The above is evidenced by the fact that the trial judge had ruled, *as a matter of law,* that the alleged perjurious statement "Well, I took $5,000.00 — gave Harry Lee $20,000.00 and went to the bank and put $5,000.00 in there, and I got a thousand dollars out to give to Mr. Sweet that I owed" *was not material.* This was done by the trial judge when he granted Petitioner's Motion for Judgment of Acquittal as to count one of the Information since the foregoing quoted statement was the issue presented under said count.

In attempting to prove the Petitioner's guilt, the *only* witness produced by the State to contradict the foregoing alleged perjurious statement made by the Petitioner was Trulock; *whose testimony merely contradicts that of the Petitioner.* The record is replete with evidence that *Trulock and the Petitioner had spoken to one another privately on several occasions.*

The Petitioner testified exactly as she had testified at the first trial of John Sweet (in which a mistrial was declared because of a hung jury) except that she also stated that she had given John Sweet $1,000.00 out of the $5,000.00 that she had placed in a safety deposit box and that Trulock had told her not to say anything about this. She also testified at the second trial (which resulted in John Sweet being found guilty of first degree murder and was sentenced to life imprisonment) that she had given $20,000.00 to Harry Lee to give to John Sweet and that John Sweet had acknowledged to her that he had received said sum of money from Harry Lee.

The Petitioner was sentenced to serve a term of *life imprisonment* albeit she was 48 years of age, had absolutely no previous criminal record of any kind, had no formal education, had an eleven (11) year old daughter in her care and custody and had had no previous court experiences.

Petitioner filed her Petition for Writ of Certiorari with the Supreme Court of the State of Florida (App. p. A-14 minus exhibits).

On March 22, 1973, the Supreme Court of Florida denied Petitioner's Petition for Writ of Certiorari with *two (2) of the Justices dissenting* (App. p. A-19). On

April 6th, 1973, Petitioner filed her Petition for Rehearing with the Supreme Court of the State of Florida (App. p. 20), which Petition was denied on May 17th, 1973 (App. p. A-23).

REASONS FOR GRANTING THE WRIT

(a). Rule 4.5, sub-section (6) of the Florida Appellate Rules, provides as follows:

> "From District Court to Supreme Court. Where any decision of a district court of appeal (1) affects a class of constitutional or state officers, or (2) passes upon a question certified by such district court to be of great public interest, or (3) *is in direct conflict with a decision of another district court of appeal or of the Supreme Court on the same point of law, petition may be filed with the Supreme Court to issue a writ of certiorari to review such decision.*" (Emphasis Supplied).

It is most respectfully submitted that the District Court of Appeal's decision affirming the judgment and sentence of the Trial Court came squarely within subsection (3) in that it was in direct conflict with the decisions of the Supreme Court of Florida in the cases of *Yarbrough vs. State,* 83 So. 873 and *Ward vs. State,* 91 So. 189, wherein the Supreme Court of Florida considered the identical issue presented in the case at Bar and that the District Court of Appeals by its decision and opinion of December 5th, 1972, ruled contrary to the said decisions of the Supreme Court of Florida.

The well established rule in the State of Florida regarding the proof required to convict a person of perjury is stated by the Supreme Court of Florida in *Ward v. State, supra,* as follows:

> *"No one should be convicted of the crime of perjury because one other person may swear to a contradictory state of facts. This simply opposes the sworn statement of another."* See also *25 Fla. Jur. 53*, Section 62. (Emphasis Supplied).

(b) The only witness that the State offered to prove that Trulock did not tell Petitioner not to say anything about the $1,000.00 at the second trial was Roma Trulock himself. In fact, when prosecuting attorney was asked whether or not he knew if Trulock ever told Petitioner not to say anything about the $1,000.00, he replied that he did not know whether or not that was so.

In *Yarbrough v. State, supra,* the proof required to convict one of perjury is stated by the Supreme Court of Florida as follows:

> "To convict of the crime of perjury, the offense *must be proved by the oaths of two witnesses* or *by the oath of one witness and other independent and corroborating circumstances which are deemed of equal weight with another witness.* Such is the rule now well established on authority. And the element of the offense, which must be so proved, *is the falsity of the material matter sworn to."* (Emphasis Supplied).

The trial judge's own statements and arguments support Petitioner's position that the trial court should have granted Petitioner's Motion for Judgment of Acquittal as to count two since *the State only offered the contradictory testimony of Roma Trulock,* and did not offer any "other independent and corroborating circumstances equaling in weight the testimony of another witness" as shown by the following colloquy:

"THE COURT: Motion for Directed Verdict in Count Three is granted.

I want to know what evidence there is as to Count Two. What circumstantial evidence you have as to the falsity of the statement, 'Mr. Trulock told me not to say anything about that at the other trial.'

MR. CAMPBELL: I don't have to have circumstantial evidence—

THE COURT: Yes. You have Mr. Trulock.

MR. CAMPBELL: And I have Darty.

THE COURT: No, this has to be the falsity of it now. *How can Darty testify that Trulock never told her not to say anything.*

MR. CAMPBELL: Because Darty testified that on May 7th, 1968, she told him the reason she didn't testify about it was not Trulock, because nobody ever asked her.

THE COURT: All you need is her statement plus one other substantial witness. You have her statement.

MR. CAMPBELL: Say that again?

THE COURT: Trulock's statement and her statement, your two witnesses.

MR. CAMPBELL: Wait a minute, we are proving up that it is a lie. That Trulock told her not to say anything about that at the other trial.

THE COURT: That's right. Now, *the lie is you have Trulock saying he never told her not to testify. That's one witness. Now, what else do you have?*

MR. CAMPBELL: You have her statement under oath to Mr. Darty on May 7th, 1968, that it wasn't Trulock because, 'Nobody ever asked me.' She didn't say that Trulock, that she told Trulock about it. She didn't say anything else about it. It was, 'Nobody ever asked me.'

THE COURT: *How do you know that that answer is a lie?*

You cannot, in Perjury, *base a Perjury on two inconsistent statements without proving which one is the false one.*

MR. CAMPBELL: Yes, I know.

THE COURT: *Which one is the false one? The fact that Trulock didn't tell her, or the fact that she wasn't asked? Suppose that is the lie?*

MR. CAMPBELL: Well, it is factual matter. *You have the two statements and it is a factual matter as to which one they are going to believe.*

THE COURT: No, sir.

MR. CAMPBELL: It is not a matter of Law, Judge, when you have two witnesses and two statements.

THE COURT: But you have two witnesses. What is the lie or what was the truth?

MR. CAMPBELL: All I need is one witness and corroborating evidence.

THE COURT: Well, actually you have another witness, you have Trulock.

MR. CAMPBELL: You have Trulock and you have her own statement under oath.

THE COURT: *But that may be the lie. There is no validity, there is nothing before me that says that is true.*

MR. CAMPBELL: It corroborates Trulock.

THE COURT: How does it? It just says that no one ever asked me. Suppose she is saying no one ever asked me because Trulock said, 'Don't tell anybody,' so she is saying, 'Well, I am going to still honor what Trulock said.' She is saying to herself, *'I am still honoring that; I am honoring the fact that he told me not to tell anybody, so now I don't want to tell what Trulock told me not to tell anybody, so I will say nobody said anything.'*

MR. CAMPBELL: That is the wholepoint, Judge. If you believe that Trulock told her not to say it, either she told Trulock about it to begin with or that he asked her about it, one of the two. So whether he asked her about it or not, whether she voluntarily told him is insignificant. The fact is not honoring what Trulock told her, not to say anything about it, and you have got to have corroborating witness and you have got to have the corroborating evidence.

THE COURT: We are back to our same point.

MR. RAGANO: I think they violated just about every rule pertaining to Perjury. First of all, one rule is that Perjury — you cannot convict on Perjury simply because another person may swear to a contradictory state of facts.

THE COURT: *That is the one against one. That is the one against one, that's why you have the rule for two witnesses.* (Emphasis Supplied).

* * * *

MR. CAMPBELL: Judge, the only evidence before this Court is that that statement is false.

THE COURT: Which statement?

MR. CAMPBELL: The Roma Trulock — 'That I told Roma Trulock about it and he said not to say anything about it.' The only evidence before this Court is that the statement is false.

THE COURT: *Where is the evidence? Give me the evidence.*

MR. CAMPBELL: *By Roma Trulock.*

THE COURT: *But you need another for it to be evidence to meet the test for Perjury—*

MR. CAMPBELL: Testimony of the accused under oath is admissible, where the testimony of the accused in the second case either contradicts the testimony in the first case or expressly admits the falsity of the prior testimony.

However, a charge of Perjury cannot be proved simply by showing that the accused has previously, at different times, testified to two opposite constructions and are irreconcilable. On the contrary, there must be testimony in addition to the Defendant's own contradictory statements which tend to show which of the statements is false. Judge, those are contradictory statements.

THE COURT: To that I agree.

MR. RAGANO: We concede that.

THE COURT: They are contradictory.

MR. CAMPBELL: If the Defendant's statements are contradictory, then we have no problem.

THE COURT: *You don't know which is the false one."* (Emphasis Supplied).

(c) The Florida District Court of Appeal, Third District, held that the state had proven the charge against the Petitioner by the testimony of Trulock and "other independent and corroborating circumstances equaling in weight the testimony of another witness." We most respectfully submit to this Honorable Court that it was impossible for the State of Florida to prove count two because it could not produce a witness other than Roma Trulock or "other independent and corroborating circumstances equaling in weight the testimony of another witness", as required under the well established law of the State of Florida, since the Petitioner met with Roma Trulock privately on several occasions from May 7, 1967, to the date of the second trial. Hence, it would simply be a matter of Roma Trulock's word against her word as to whether or not Roma Trulock ever told her not to say anything about the $1,000.00 that she had given to John Sweet at the second trial.

It is most respectfully submitted that the decision of the Florida District Court of Appeal, Third District, in affirming the judgment and sentence of the lower Court clearly deprived Petitioner of her constitutional rights to "due process of law" and "equal protection of the laws" as guaranteed to her under the Fifth and Fourteenth Amendments to the United States Constitution when said Court refused to follow the decisions of the Supreme Court of Florida in the cases of *Yarbrough* and *Ward, supra.*

It is further submitted to this Honorable Court that the denial of Petitioner's Petition for Writ of Certiorari by the Supreme Court of the State of Florida likewise deprived the Petitioner of her constitutional rights to 'due process of law' and 'equal protection of the laws' as guaranteed to her under the Fifth and Fourteenth Amendments to the United States Constitution.

(d) The question raised in this Petition was initially raised by Petitioner in her Motion for Judgment of Acquittal at the conclusion of the State's case at her trial and was subsequently raised in the District Court of Appeal of Florida, Third District, and the Supreme Court of the State of Florida.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

FRANK RAGANO
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28 W. Flagler Street
Miami, Florida 33130

Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Rehearing was mailed to the Honorable Robert Rust, U. S. Attorney, 14 N.E. First Avenue, 300 Ainsley Building, Miami, Florida, this 25 day of August, 1973.

FRANK RAGANO

APPENDIX

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OPINION A-2

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ORDER DENYING PETITION FOR REHEARING A-23

INFORMATION A-24

IRENE MAXCY WELLS,
Appellant,
v.
THE STATE OF FLORIDA,
Appellee.

NO. 71-1257

District Court of Appeal of Florida,
Third District.

Dec. 5, 1972.

Rehearing Denied Jan. 9, 1973.

Defendant was convicted before the Criminal Court of Record for Dade County, Alfonso C. Sepe, J., of perjury, and she appealed. The District Court of Appeal, Person, J., held that defendant's alleged false statement, in prior prosecution for murder of her husband, that she did not place $5,000 in safety-deposit box as she had mentioned previously but rather put $5,000 in and took out $1,000 to give to person who was charged in such prior prosecution with having received money from her for the murder and that State's investigator told her not to say anything about the $1,000 which she claimed she later paid to such person charged in repayment of personal loan was material in the prior prosecution upon issues of charged person's guilt and investigator's credibility and was sufficient to constitute perjury.

Affirmed.

1. *Perjury*

Alleged false statement, by wife in prosecution for murder of her husband after she was granted immunity from prosecution, that she did not place $5,000 in safety-deposit box as she had mentioned previously but rather put $5,000 in and took out $1,000 to give to person charged in such prosecution with having received money from her for the murder and that State's investigator told her not to say anything about the $1,000 which she

claimed she later paid to such person charged in repayment of personal loan was material, for perjury purposes in the prosecution upon issues of charged person's guilt and investigator's credibility and was sufficient to constitute perjury.

2. *Perjury*

Degree of materiality of testimony in question is not of any importance in perjury prosecution; rather, test is whether the alleged false statement is capable of influencing court on issue the court is considering.

3. *Perjury*

Whether false testimony in question was believed did not, with respect to subsequent perjury prosecution, deprive the testimony of its material character.

4. *Perjury*

Evidence consisting of one witness' testimony and of independent and corroborative circumstances which were of equal weight with another witness was sufficient to support perjury conviction of witness who allegedly gave false testimony, in prior murder prosecution of person to whom she originally stated she had paid money for murder of her husband, after being granted immunity.

5. *Perjury*

Conviction of perjury may be entered if one witness testifies and there are sufficient corroborating circumstances to equal the weight of a second witness.

6. *Criminal Law*

Where instruction presented to trial court was incorrect statement of the law, it was not error to refuse such instruction.

7. Criminal Law

Even if requested instruction correctly stated the applicable law, it was not error to refuse the instruction, where subject matter was fully covered in general charges given by court.

Frank Ragano, Tampa, for appellant.

Robert L. Shevin, Atty. Gen., and Arnold R. Ginsberg, Asst. Atty. Gen., for appellee.

Before PEARSON, CHARLES CARROLL and HAVERFIELD, JJ.

PEARSON, Judge.

Irene Maxcy Wells was suspected of complicity in the murder of her husband, Charles Von Maxcy. The State of Florida granted her immunity from prosecution for the crime in return for her agreement to testify against John Sweet, a person to whom she stated she had paid the money for the murder. She testified at the first trial of John Sweet which resulted in a mistrial. She testified somewhat differently at Sweet's second trial. The second trial resulted in a conviction which was set aside on appeal. See Sweet v. State, Fla. App. 1970, 235 So.2d 40. The appellant was indicted and informed against for the crime of perjury. She was tried, convicted, and sentenced to life in prison. This appeal is from that judgment and sentence.

The facts which must be referred to in a discussion of appellant's points may be summarized as follows. On ,October 3, 1966, the husband of the appellant Charles Von Maxcy, was killed. The State suspected that John Sweet had committed the crime. On May 7, 1967, the appellant gave a sworn statement to the state's attorney after she had been promised immunity. The appellant stated that John Sweet had arranged the murder of her husband by two individuals from Boston and

that two or three weeks later, Harry Lee, an attorney from Sebring, Florida escorted her to a bank in Sebring where she cashed a check for $25,000. She stated that she was given the money in $100 bills and that she gave $20,000 to Harry Lee to give to John Sweet and that she put $5,000 in her safety-deposit box. At the time the bank gave the appellant the $25,000, the bank officials had made a record of the serial numbers of the bills. This fact was first brought out at the second trial of John Sweet. Subsequent to the time that the $20,000 was turned over to John Sweet, he went to the same bank in Sebring and made a payment on a $700 loan that he had at the bank. The seven $100 bills that he used were shown to be a part of the $25,000 that the appellant had received from the bank. The State was able to show that the appellant had cashed the $25,000 check on November 10, 1966 and that November 10 was the date that she went into her safety-deposit box. The State was further able to show that the records at the bank demonstrated that she did not reenter the safety-deposit box until after the date when Mr. Sweet made the $700 payment to the bank.

At the second trial, Irene Maxcy's testimony differed from that given at the first trial in that she testified that she had given the $20,000 to Mr. Lee for delivery to Mr. Sweet but that before she closed her safety-deposit box, she took out an additional $1,000 of the money and later gave it to Mr. Sweet in repayment of a personal loan. The effect of this testimony was to provide a possible basis for Mr. Sweet's possession of $700 of the marked bills without receiving them because of the murder payoff. In addition, the appellant testified at the second trial that she was told by the state's investigator not to mention the $1,000 she allegedly paid upon the personal loan and for that reason she did not testify about it at the first trial. The effect of this testimony was to discredit the state's investigator whose testimony was an important and necessary link in the chain of evidence at the second trial of John Sweet.

A four count information was filed against the appellant charging her with perjury. After a motion for change of venue had been granted by the Criminal Court of Record of Polk County, Florida, the case was tried in the Criminal Court of Record of Dade County, Florida. At the conclusion of the State's case, the trial judge granted motions for judgment of acquittal as to counts one, three and four of the information. The appellant was found guilty upon count two. Count two alleged that the appellant was guilty of perjury in that she did:

* * * *

". . . wilfully, knowingly, falsely, feloniously and corruptly swear in substance and effect as follows: 'Well, I took $5,000.00 — gave Harry Lee $20,000.00 and went to the bank and put $5,000.00 in there, and I got a thousand dollars out to give to Mr. Sweet that I owed and Mr. Trulock told me not to say anything about that at the other trial.' "

* * * *

On this appeal, the appellant has presented three points for reversal. They are as follows:

I

"Assuming arguendo that the alleged statement by the appellant was untrue, was it material to the issue in the John Sweet case?

II

"Did the court err in denying appellant's motion for judgment of acquittal?

III

"Did the court err in refusing to give appellant's requested charge number 6?"

CONSIDERATION OF POINT ONE

[1, 2] In her argument that the charged perjury was not material, the appellant relies heavily upon the fact that John Sweet's second trial resulted in a conviction in the trial court. The elements of the crime of perjury have been set out in the case of Gordon v. State, Fla. 1958, 104 So.2d 524, which quotes them from 3 Wharton's Criminal Law and Procedure § 1290, as follows: "'(1) the wilful (2) giving of false testimony (3) on a material point (4) in a judicial proceeding, (5) by a person to whom a lawful oath had been administered.'" We are, of course, concerned here only with the third element which is the materiality of the testimony. The degree of materiality of the testimony is not of any importance, but rather the test is whether the alleged false statement is capable of influencing the court on the issue the court is considering. Shelton v. State, 157 Fla. 482, 26 So.2d 444 (1946). The testimony of the appellant at the second trial that she did not place $5,000 in the safety-deposit box, but actually put $5,000 in and took out $1,000 so that she really placed $4,000 back in the box, was material to the issue of whether the $700 revealed to be in John Sweet's possession after the pay off was a part of the pay off money. The appellant's testimony was therefore material upon the issue of defendant Sweet's guilt.

[3] The portion of the appellant's testimony included in count two in reference to the $1,000 which she took out of the safety-deposit box, and which states that "Mr. Trulock told me not to say anything about that at the other trial", was also material because Trulock's testimony was material to the issue of Sweet's guilt, and the effect of appellant's testimony that Trulock had attempted to falsify the evidence was material to the issue of witness Trulock's credibility. It is not important to this appeal that the jury did not believe appellant's testimony about placing $5,000 in the box and then taking out $1,000 which she allegedly gave to John Sweet. The testimony concerned a material issue

and even though not believed, was sufficient to constitute perjury. The jury at Sweet's trial did not believe the appellant and did believe Trulock. This was their province. Whether the false testimony was believed or not does not deprive the testimony of its material character. See Fields v. State, 94 Fla. 490, 114 So. 317 (1927).

CONSIDERATION OF POINT TWO

[4] Appellant's second point questions the sufficiency of the evidence to support the judgment of guilt. The basic argument under this point is that appellant's conviction cannot stand as to the portion of her statement concerning witness Trulock because the proof submitted by the State is simply the word of the appellant against the word of witness Trulock. In Yarbrough v. State, 79 Fla. 256, 83 So. 873 (1920), the Supreme Court of Florida in quoting from an earlier case, McClerkin v. State, 20 Fla. 879 (1884), set forth the rule as to the sufficiency of proof in order to convict for perjury:

> " 'To convict of the crime of perjury, the offense must be proved by the oaths of two witnesses, or by the oath of one witness, and by other independent and corroborating circumstances, which is deemed of equal weight with another witness. Such is the rule now, well established on authority.' "

The proof in the case now before us meets this test. The falsity of appellant's testimony in regard to the particulars recited in count two was proved by the testimony of one witness, Roma Trulock, and by other independent and corroborating circumstances which are of equal weight with another witness. The record reveals the following circumstances. First, appellant's testimony at John Sweet's first trial not only omitted the testimony which she later gave, but her testimony at the first trial was by its very nature contradictory to the testimony given at the second trial. At the first trial, appellant testified as to her visit to the bank and the placing of $5,000 in her safety-deposit box. This

testimony would have been false if in truth she had merely placed the $5,000 in the box for an instant and then took out the $1,000. She did not claim a subsequent visit to the box in her perjured testimony, but in effect maintained that her first testimony was in its essence false because she only placed $5,000 in the box for an instant and then immediately took out $1,000. This contradiction in testimony of itself may not be sufficient for conviction but it certainly is a corroborating circumstance.

Secondly; the record shows that appelant made a prior statement which contradicted her testimony at the second trial. It was established that when appellant had a conference with the state's attorney shortly prior to the second trial of John Sweet, she was asked why she did not mention the $1,000 at the prior trial and she replied at that time "Nobody ever asked me." This prior inconsistent statement was a corroborating circumstance tending to prove the falsity of appellant's statement at the second trial that witness Trulock had told her not to mention it.

The record establishes a third corroborating circumstance as a result of the fact that the appellant's sister, who was on the scene when the appellant was interviewed by witness Trulock, testified that she heard the appellant say that she put the $5,000 in the box, but heard no conversation about $1,000 being withheld.

The circumstances recited demonstrate a pattern of deception initiated after the first trial of John Sweet, and taken together they are sufficient to meet the quantum of proof required for perjury.

CONSIDERATION OF POINT THREE

[5, 6] Appellant's third point claims error because the trial court refused to instruct the jury by giving the defendant's requested charge. In fact, the requested charge was not proper because it amounted to an in-

struction to find the defendant not guilty unless her alleged perjured testimony was proved to be false by the sworn statements of two witnesses. As we have seen, this is not a correct statement of the law inasmuch as it is established in Florida that a conviction of perjury may be entered if one witness testifies and there are sufficient corroborating circumstances to equal the weight of a second witness. See Yarbrough v. State, supra. See also Ward v. State, 83 Fla. 311, 91 So. 189 (1922). Since the instruction presented to the trial court was an incorrect statement of the law it was not error to refuse the instruction. See Gordon v. State, Fla. App. 1960, 119 So.2d 753.

[7] Our examination of the entire charge given by the court shows that it would not have been error to refuse the requested instruction even if it had correctly stated the applicable law because the subject was fully covered in the general charges given by the court. Mackiewicz v. State, Fla. 1959, 114 So.2d 684; Yost v. State, Fla. App. 1971, 243 So.2d 469; Pabst v. State, Fla. App. 1964, 169 So.2d 329; Kraft v. State, Fla. App. 1962, 143 So.2d 863.

Since we have examined the record in the light of each point presented by the appellant and find that no reversible error has been shown, the judgment and sentence are affirmed.

Affirmed.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT

CASE NO. 71-1257

IRENE MAXCY WELLS, *Appellant,*	:	
vs.	:	PETITION FOR
THE STATE OF FLORIDA, *Appellee.*	:	REHEARING

COMES NOW the Petitioner, IRENE MAXCY WELLS, by and through her undersigned counsel and pursuant to Rule 3.14, Florida Appellate Rules, and within the time provided therein, files this her Petition for Rehearing directed to this Honorable Court's Order and Decision dated December 5, 1972, and as grounds therefore would show:

1. That this Honorable Court must have overlooked and failed to consider the fact that the jist of Count One of the Information was that the Petitioner lied when she testified at the second trial that she had taken $1,000.00 from the $5,000.00 that she had placed in the safety-deposit box and given it to John Sweet and that the Trial Judge granted Petitioner's Motion for Judgment of Acquittal on the grounds that said statement was not material to the issues before the Court.

2. This Honorable Court must have overlooked and failed to consider the fact that the jist of Count Two was that the Petitioner lied at the second trial when she testified that Trulock had told her not to say anything about the $1,000.00 that she had given to John Sweet out of the $5,000.00 that she had placed in the safety deposit box and that she had numerous conversations privately with Trulock and therefore the only evidence that was or could be presented by the State

was the testimony of Trulock which was simply his word against hers which is insufficient under the case law of the State of Florida. That under these circumstances there was and could not have been any corroborating evidence which would be equivalent to a second witness.

3. This Honorable Court must have overlooked and failed to consider the fact that the Petitioner testified at the second trial that from the $25,000 check that she cashed, she gave $20,000.00 to Harry Lee to give to John Sweet and that this money was given to John Sweet to pay off the killers and that John Sweet subsequently acknowledged to her that he had received the $20,000.00 from Harry Lee to give to the killers. Having placed the marked money in his possession then the question of whether or not Trulock in fact told her not to say anything about the $1,000.00 that she gave to John Sweet became absolutely immaterial since she placed $20,000.00 of the marked money into John Sweet's hands and another $1,000.00 would not have made the slightest bit of difference.

4. This Honorable Court must have overlooked and failed to consider the fact that the Petitioner testified at the second trial that John Sweet made the arrangements to kill her husband, acknowledged to her that he had her husband killed and that he received at least $20,000.00 to pay off the killers. The jury obviously believed her on this material testimony since it returned a verdict of guilty as charged against John Sweet. That this testimony was the jist of the State's case and that whether or not Trulock told her not to say anything about the $1,000.00 to give to John Sweet became immaterial to the issue before the Court.

WHEREFORE, the Petitioner prays that this Honorable Court will grant her Petition for Rehearing, withdraw its Order and Decision of December 5, 1972,

and thereafter enter an order reversing the Judgment and Sentence herein and dismiss the above entitled cause.

Respectfully submitted,

RAGANO & LA PORTE
Attorneys for Petitioner
Suite 400 - 28 W. Flagler Street
Miami, Florida

By _____
FRANK RAGANO

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Rehearing has been furnished by hand delivery to the Office of the Attorney General, State Office Building, (530), 1350 N.W. 12th Avenue, Miami, Florida, this 20th day of December, 1972.

_____
FRANK RAGANO

IN THE SUPREME COURT OF FLORIDA

CASE NO:	
IRENE MAXCY WELLS, *Petitioner,*	: PETITION FOR A WRIT : OF CERTIORARI TO
vs.	: THE DISTRICT COURT
THE STATE OF FLORIDA, *Respondent.*	: OF APPEAL, THIRD : DISTRICT

TO THE SUPREME COURT OF THE STATE OF FLORIDA

Petitioner, IRENE MAXCY WELLS, presents this her Petition for Writ of Certiorari and states:

1. Petitioner seeks to have reviewed a decision of the District Court of Appeal, Third District, dated the 5th day of December, 1972, and filed in the records of said District Court on the 5th day of December, 1972, in Minute Book 47, Page 207.

2. This Petition is presented under and pursuant to Article 5, Section 4, of the Florida Constitution, and Rule 4.5c of the Florida Appellate Rules.

3. This Petition is accompanied by a transcript of so much of the proceedings as Petitioner seeks to have reviewed including the decision Petitioner seeks to have reviewed together with a true and correct copy of the Transcript of Testimony. Since a certified copy of the Transcript of Testimony was heretofore delivered to Respondent's counsel we are not delivering the Respondent an additional Transcript of Testimony but only that portion of the Transcript of Record not already in their possession. A certified copy of said portions of the Transcript of Record are attached hereto and made a part hereof and marked for identification as Petitioner's Exhibit"1".

4. The following are the facts of the case:

Thereafter, Petitioner filed her Petition for Writ of

Certiorari with the Supreme Court of the State of Florida (App. p.).

On March 22, 1973, the Supreme Court of Florida denied Petitioner's Petition for Writ of Certiorari with *two (2) of the Justices dissenting* (App. p. 3. On April 6th, 1973, Petitioner filed her Petition for Rehearing with the Supreme Court of the State of Florida (App. p.) which Petition was denied on May 17th, 1973.

(a) on April 30, 1971, a four count Information was filed against the Petitioner charging her with perjury (App. p. A-). At the conclusion of the State's case, the trial judge granted a Motion for Judgment of Acquittal as to counts one, three and four and the Petitioner was subsequently found guilty of count two of the Information by the jury.

(b) The pertinent portions of Count Two of the Information are as follows:

> ". . . .after being duly sworn to speak the truth, did wilfully, knowingly, falsely, feloniously and corruptly swear in substance and effect as follows: 'Well I took $5,000.00 — gave Harry Lee $20,000.00 and went to the bank and put $5,000.00 in there, and I got a thousand dollars out to give to Mr. Sweet that I owed and *Mr. Trulock told me not to say anything about that at the other trial.'*, such matter being material in said cause and *the said IRENE Maxcy Wells, then and there well knowing that the said Mr. Trulock had not told her not to say anything at the other or another trial, about her having got out or kept out or taken out of the moneys in her hands and possession as aforesaid, the sum of $1,000.00, or any other sum to give to the said Mr. Sweet.*" (Emphasis supplied)

(c) The gist of count two of the Information is that when the Petitioner stated at the second trial of the case of the *State of Florida vs John Sweet* that one

Roma Trulock told Petitioner not to say anything about the $1,000.00 that she had taken from $5,000.00 to give to John Sweet and that said statement was untrue. This being so, the only issue before the jury under count two of the Information was *whether or not the Petitioner commited perjury when she testified as follows:*

> "Mr. Trulock told me not to say anything about that at the other trial" (TR. 698)

The above is evidenced by the fact that the Trial Judge had ruled, *as a matter of law,* that the alleged perjurious statement "Well, I took $5,000.00 — gave Harry Lee $20,000.00 and went to the bank and put $5,000.00 in there, and I got a thousand dollars out to give to Mr. Sweet that I owed" *was not material.* This was done by the Trial Judge when he granted Petitioner's Motion for Judgment of Acquittal as to count one of the Information since he foregoing quoted statement was the issue under said count.

In attempting to prove the Petitioner quilty the *only* witness produced by the State to contradict the foregoing alleged perjurious statement made by the Petitioner was Trulock; *whose testimony merely contradicts that of the Petitioner.* The record is replete with evidence that Trulock and the Petitioner had spoken to one another privately on several occasions.

The Petitioner testified exactly as she had testified at the first trial of John Sweet (in which a mistrial was declared because of a hung jury) except that she also stated that she had given John Sweet $1,000.00 out of the $5,000.00 that she had placed in a safety deposit box and that Trulock had told her not to say anything about this. She also testified at the second trial (which resulted in John Sweet being found guilty of first degree murder and was sentenced to life imprisonment that she had given $20,000.00 to Harry Lee to give to John Sweet and that John Sweet had acknowledged to her that he had received said sum of money from Harry Lee.

"More than one witness testified that the Defendant did testify under oath in the trial of a larceny case that he 'had not seen and did not have in his possession the automobile alleged to have been stolen, but to prove the falsity of this statement only one witness was produced, and there was in the record the uncorroborated evidence of one witness only to prove that the Defendant had seen and did have in his possession such automobile."

On these facts this Honorable Court ruled as follows:

> The evidence was insufficient to convict the Defendant of perjury since it is the law in the State of Florida that a verdict of conviction in a perjury case must have for its support something more than the testimony of one witness, the offense must be proved by the oaths of two witnesses, or by the oath of one witness and by other independent and corroborating circumstances, which is deemed of equal weight with another witness.

7. The decision of the District Court of Appeal, Third District, which Petitioner seeks to have reviewed is in direct conflict with the above mentioned decision of this Honorable Court. Because of the reasons and authorities set forth in Petitioner's brief, it is believed that the decision sought to be reviewed is erroneous and the conflicting decision of this Honorable Court in the case of *Yarbrough v. State,* supra, (which principal of law has been consistently followed by this Honorable Court and the District Courts of Appeal of this State; see Petitioner's (Brief) is correct and should be approved by this Court as the controlling law for the State of Florida.

WHEREFORE, Petitioner requests this Court to grant a Writ of Certiorari and enter its order quashing the decision and order hereby sought to be reviewed, approving the decision of this Honorable Court as the correct decision, and granting such other and further relief as shall seem right and proper to the Court.

Respectfully submitted,

FRANK RAGANO
Counsel for Petitioner
Suite 400 Roberts Building
28 West Flagler Street
Miami, Florida 33130

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Writ of Certiorari to the District Court of Appeal, Third District, was furnished by mail to the Honorable Robert L. Shevin, Attorney General of Florida, State Office Building, 1350 N.W. 12th Avenue, Miami, Florida, this 24th day of January, 1973.

FRANK RAGANO

SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1973

THURSDAY, MARCH 22, 1973

IRENE MAXCY WELLS, *Petitioner,*	:	CASE NO. 43,319
vs.	:	DISTRICT COURT OF APPEAL,
THE STATE OF FLORIDA, *Respondent.*	:	THIRD DISTRICT
	:	District Court
	:	No. 71-1257

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

CARLTON, C.J., ROBERTS, ERVIN, ADKINS and BOYD, JJ., Concur
MCCAIN and DEKLE, JJ., Dissent

A True Copy

TEST:

Sid J. White
Clerk Supreme Court.

W

cc: Hon. Wm. P. Carter, Clerk
Hon. J. F. McCracken, Clerk
Hon. Alfonso C. Sepe, Judge
Hon. Arnold R. Ginsberg
Hon. Frank Ragano

IN THE SUPREME COURT OF FLORIDA

CASE NO. 43,319

IRENE MAXCY WELLS, *Petitioner* vs. THE STATE OF FLORIDA, *Respondent.*	:	PETITION FOR REHEARING

COMES NOW the Petitioner, IRENE MAXCY WELLS, by her undersigned counsel and pursuant to Rule 3.14, Florida Appellate Rules, and within the time provided therein, files this her Petition for Rehearing directed to this Honorable Court's Order and Decision dated March 22, 1973, and as grounds therefore would show:

I.

That this Honorable Court must have overlooked and failed to consider its decisions in the cases of *Yarbrough vs. State,* 83 So. 873, and *Ward vs. State,* 91 So. 199, wherein this Court considered the identical issue that was presented in the case at Bar to the District Court of Appeal, Third District, and that the said Court by its Decision and Opinion of December 5, 1972, ruled contrary to the decisions of this Court in the *Yarbrough* and *Ward* cases, supra.

II.

That this Honorable Court must have overlooked and failed to consider the fact that the issue that was before the District Court of Appeal, Third District, was:

> "WHETHER OR NOT A PERSON CAN BE CONVICTED OF THE CRIME OF PERJURY BECAUSE ONE OTHER PERSON TESTIFIES TO A CONTRADICTORY STATE OF FACTS."

That the gist of Count Two of the Information was that when the Petitioner stated at the second trial of John Sweet that:

"TRULOCK TOLD ME NOT TO SAY ANYTHING ABOUT THAT AT THE OTHER TRIAL",

it was perjury. That this Honorable Court must have overlooked and failed to consider the fact that the *only witness* that the State offered to prove that Trulock did not tell Petitioner "not to say anything about that at the other trial", was *Roma Trulock himself.*

III.

That this Honorable Court must have overlooked and failed to consider the fact that the State did not and indeed, could not, possibly prove Count Two of the Information for the reason that it was simply *Trulock's word against the Petitioner's word* and since the record reflects that they had spoken to one another on several occasions privately there could be no second witness or other independent and corroborating circumstances which are deemed of equal weight to the testimony of another witness. See *Gonzales vs. State,* 220 So.2d 397.

IV.

This Honorable Court must have overlooked and failed to consider the fact that the identical issue that was presented to the District Court of Appeal, Third District, in the case at Bar, to-wit: "Whether or not a person can be convicted of the crime of perjury because one other person testifies to a contradictory state of facts", was the identical question presented to this Honorable Court in the cases of *Yarbrough* and *Ward,* supra, and this Honorable Court in those cases, wherein the facts were substantially the same as those in the case at Bar, ruled as follows:

> "No one should be convicted of the crime of perjury because one other person may swear to a contradictory state of facts. This simply opposes the sworn statement of another."

Hence, the Decision rendered by the District Court of Appeal, Third District, in the case at Bar on December 5, 1972, is in direct conflict with the decisions of this

Honorable Court in the cases of *Yarbrough* and *Ward,* supra, and we therefore respectfully submit that this Honorable Court has jurisdiction and should grant Petitioner's Petition for Writ of Certorari, grant oral arguments and thereafter render a decision holding that the Decision of the District Court of Appeal, Third District, of December 5, 1972, is erroneous and that the decisions of this Honorable Court in the cases of *Yarbrough* and *Ward,* supra, are correct and are approved by this Court as the controlling law for the State of Florida.

V.

That since there is a direct conflict between the Decision of the District Court of Appeal, Third District, of December 5, 1972, and the decisions of this Honorable Court in the cases of *Yarbrough* and *Ward,* supra, this Court should take jurisdiction of the case at Bar and it is most respectfully submitted that by this Court's Order and Decision of March 22, 1973, the Petitioner has been deprived of her constitutional rights to "due process of law" and "equal protection of the laws" as guaranteed to her under the Fifth and Fourteenth Amendments to the Federal Constitution.

WHEREFORE, the Petitioner respectfully prays that this Honorable Court will grant her Petition for Rehearing, withdraw its Order the Decision of March 22, 1973, and grant Petitioner's Petition for Writ of Certorari.

Respectfully submitted,

FRANK RAGANO
Suite 400, Roberts Building
28 West Flagler Street
Miami, Florida 33130
Attorney for Petitioner

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Rehearing was furnished by mail to ARNOLD R. GINSBERG, Esquire, Assistant Attorney General, State Office Building (530), 1350 N. W. 12th Avenue, Miami, Florida, 33136, this 5th day of April, 1973.

FRANK RAGANO

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1973

WEDNESDAY, MAY 30, 1973

IRENE MAXCY WELL, *Petitioner,*	:	
vs.	:	CASE NO. 43,319
THE STATE OF FLORIDA, *Respondent.*	:	

On consideration of the petition for rehearing filed by attorney for petitioner

IT IS ORDERED by the Court that said petition be and the same is hereby denied.

Petitioner's Motion for Stay of Mandate is denied.
CARLTON, C.J., ROBERTS, ERVIN, ADKINS and BOYD, JJ., concur
McCAIN and DEKLE, JJ., dissent

A True Copy

TEST:

Sid J. White
Clerk Supreme Court.
By: Kay D. Yert
Deputy Clerk.

Y

cc: Hon. Frank Ragano
Hon. Reeves Bowen
Hon. Arnold R. Ginsberg
Hon. W. P. Carter, Clerk
Hon. J. F. McCracken, Clerk
Hon. Alfonso C. Sepe, Judge

(THE ORDER OF MARCH 22, 1973 HAS BEEN MAILED TO THE CLERK OF THE THIRD DISTRICT COURT OF APPEAL.)

No._____

IN THE CRIMINAL COURT OF RECORD, of the County of Polk and State of Florida, in the year of our Lord, one thousand nine hundred and seventy-one.
S-10979-JGH/sw

STATE OF FLORIDA	:	INFORMATION FOR
vs.	:	PERJURY
IRENE MAXCY WELLS	:	FS 837.02

In the Name and by Authority of the State of Florida

GORDON MacCALLA, County Solicitor for the County of Polk, prosecuting for the State of Florida in said County, under oath, information makes that IRENE MAXCY WELLS of the County of Polk, and State of Florida, on the 1st day of November, in the year of our Lord, one thousand nine hundred and sixty-eight, in the County and State aforesaid, in the hearing of a cause in the Circuit Court of the 10th Judicial Circuit in and for Polk County, Florida, in which the State of Florida was plaintiff and one John J. Sweet was defendant on an Indictment for Murder in the First Degree, after being duly sworn to speak the truth, did wilfully, knowingly, falsely, feloniously and corruptly swear in substance and effect as follows: "Well, I took $5,000.00 — gave Harry Lee $20,000.00 and went to the bank and put $5,000.00 in there, and I got a thousand dollars out to give to Mr. Sweet that I owed.", such matter being material in said cause and the said IRENE MAXCY WELLS then and there knowing that she swore falsely; the said IRENE MAXCY WELLS then and there well knowing that she had not got out or kept out or taken out of the moneys then and there in her hands and possession the sum of $1,000.00, or any other sum to give to the said Mr. Sweet,

COUNT TWO

GORDON MacCALLA, County Solicitor for the County of Polk, prosecuting for the State of Florida in said

County, under oath, further charges that IRENE MAXCY WELLS of the County of Polk, and State of Florida, on the 1st day of November, in the year of our Lord, one thousand nine hundred and sixty-eight, in the County and State aforesaid, in the hearing of a cause in the Circuit Court of the 10th Judicial Circuit in and for Polk County, Florida, in which the State of Florida was plaintiff and one John J. Sweet was defendant on an Indictment for Murder in the First Degree, after being duly sworn to speak the truth, did wilfully, knowingly, falsely, feloniously and corruptly swear in substance and effect as follows: "Well, I took $5,000.00 — gave Harry Lee $20,000.00 and went to the bank and put $5,000.00 in there, and I got a thousand dollars out to give to Mr. Sweet that I owed and Mr. Trulock told me not to say anything about that at the other trial.", such matter being material in said cause and the said IRENE MAXCY WELLS then and there knowing that she swore falsely; the said IRENE MAXCY WELLS then and there well knowing that the said Mr. Trulock had not told her not to say anything at the other or another trial, about her having got out or kept out or taken out of the moneys in her hands and possession as aforesaid, the sum of $1,000.00, or any other sum, to give to the said Mr. Sweet,

COUNT THREE

GORDON MacCALLA, County Solicitor for the County of Polk, prosecuting for the State of Florida in said County, under oath, further charges that IRENE MAXCY WELLS of the County of Polk, and State of Lord, one thousand nine hundred and sixty-eight, in the County and State aforesaid, in the hearing of a cause in the Circuit Court of the 10th Judicial Circuit in and for Polk County, Florida, in which the State of Florida was plaintiff and one John J. Sweet was defendant on an Indictment for Murder in the First Degree, after being duly sworn to speak the truth, and upon being asked the question, "Did you receive any telephone calls while you were at the hospital,", did wilfully, knowingly, falsely, feloniously and corruptly swear that she did

not know whether or not she had received any telephone calls while she was there at the hospital, such matter being material in said cause and the said IRENE MAXCY WELLS then and there knowing that she swore falsely, the said IRENE MAXCY WELLS then and there well knowing that she did remember whether or not she had received any telephone calls while she was at the hospital,

COUNT FOUR

GORDON MacCALLA, County Solicitor for the County of Polk, prosecuting for the State of Florida in said County, under oath, further charges that IRENE MAXCY WELLS of the County of Polk, and State of Florida, on the 1st day of November, in the year of our Lord, one thousand nine hundred and sixty-eight, in the County and State aforesaid, in the hearing of a cause in the Circuit Court of the 10th Judicial Circuit in and for Polk County, Florida, in which the State of Florida was plaintiff and one John J. Sweet was defendant on an Indictment for Murder in the First Degree, after being duly sworn to speak the truth, and upon being asked the question, "Do you recall about how much whiskey you all had consumed that afternoon?", did wilfully, knowingly, falsely, feloniously and corruptly swear that she had consumed whiskey all afternoon without let up and that she had had a glass of whiskey in her hand the whole time she was at the motel, such matter being material in said cause and the said IRENE MAXCY WELLS then and there knowing that she swore falsely,

The prosecution for each of the above set forth offenses was commenced by the finding of an Indictment on the 14th day of February, 1969, by the Grand Jurors of the State of Florida inquiring in and for the body of the County of Polk, charging the said IRENE MAXCY WELLS with the offense of Perjury, which said Indictment was presented in Open Court and filed on the 14th day of February, 1969, and a Capias was then and there issued by the Honorable Paul Vaughn,

as Clerk of the Circuit Court of the 10th Judicial Circuit, in and for Polk County, Florida, based upon said Indictment charging the said IRENE MAXCY WELLS with the offense of Perjury as aforesaid, and delivered said Capias to one Monroe Brannen, Sheriff of Polk County, Florida, on the 17th day of February, 1969, and said Capias was duly served on said IRENE MAXCY WELLS on the 17th day of February, 1969, by Monroe Brannen as Sheriff of Polk County, Florida, and prosecution was instituted against the said IRENE MAXCY WELLS on the 17th day of February, 1969, as aforesaid,

contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State of Florida.

GORDON MACCALLA
County Solicitor, Polk County, Florida

STATE OF FLORIDA
COUNTY OF POLK

Personally appeared before me, GORDON MacCALLA, County Solicitor for Polk County, Florida, who being first duly sworn, says that the allegations as set forth in the foregoing information are based upon facts that have been sworn to as true, and which if true, would constitute the offense therein charged, and that this prosecution is brought in good faith.

GORDON MACCALLA
County Solicitor

Sworn to and subscribed before me this 12th day of January, A.D. 1971.

SUE WELCH

Notary Public State of Florida at Large

My Commission Expires Feb. 23, 1971

WITNESSES FOR THE STATE

I hereby certify that this instrument is a true and correct copy as shown by files and records in my office, WITNESS MY HAND and official seal this Nov. 12, 1971.

J. F. McCRACKEN
Clerk Criminal Court of Record
By: Diane Manning, D.C.

CERTIFIED TO BE A TRUE COPY

Attest:

E. D. "BUD" DIXON
Clerk, Criminal Court
By: E. D. "Bud" Dixon, D.C.
This: 4-28-71